

ST 02-24

Tax Type: Sales Tax

Issue: Exemption from Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

**THE ABC CHRISTMAS FUND,

TAXPAYER**

No: 01 ST 0000

Sales Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Shepard Smith, on behalf of the Department of Revenue of the State of Illinois; Ms. Jane Doe, *pro se*, on behalf of The ABC CHRISTMAS Fund.

SYNOPSIS: On July 9, 2001, The ABC CHRISTMAS Fund (hereinafter “ABC”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On July 10, 2001, the Department denied ABC’s application. On July 22, 2001, ABC protested the Department’s decision and requested a hearing, which was held on July 1, 2002, with Ms. Jane Doe, President of ABC, providing oral testimony. The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC be granted an exemption identification number.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated July 10, 2001. Tr. pp. 7-8; Dept. Ex. No. 1.
2. The “Christmas Box Angel Statue” was introduced in the book, “The Christmas Box” by Richard Paul Evans, in which, a woman mourns the loss of her

child at the base of an angel monument. On December 6, 1994, an angel statue was erected and dedicated in Salt Lake City, the author's hometown, on land donated by the city. December 6 is the date of the child's death in "The Christmas Box" and the date is celebrated in many parts of the world as "Children's Day." Tr. pp. 9-12; Applicant's Ex. Nos. 11 and 16.

3.Christmas Box Statues have been erected in the children's section of twenty cemeteries. The statue provides a place for people to mourn the loss of a child, especially if the child is buried in another city, or has no identifiable grave marker, or has been cremated. Tr. pp. 11-12; Applicant's Ex. Nos. 6, 8 and 15.

4.The objective of ABC is "to erect and maintain The Christmas Box Angel Statue in the ABC Cemetery." "The monument is dedicated to anyone who has ever felt the loss of a child." Ms. Gorski started collecting money in March, 2000, and the statue was erected and dedicated in December, 2000, attended by 250 people. The statue faces the children's section of the cemetery where many children have been buried without a headstone. Tr. pp. 15-16, 23-24, 50; Applicant's Ex. Nos. 1 and 7.

5.ABC is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and filed Form 990, "Return of Organization Exempt From Income Tax" for tax year 2000. Tr. pp. 16-17; Applicant's Ex. Nos. 2 and 3.

- 6.ABC is registered under the Illinois “Charitable Trust and the Solicitation for Charity Act.” ABC’s “Illinois Charitable Organization Annual Report” for tax year 2000 shows that the president, secretary and treasurer were not paid for their services. Tr. pp. 18, 40-41; Applicant’s Ex. Nos. 4 and 14.
- 7.In tax year 2000, ABC had total revenues of \$31,879, and expenses of \$1,002 for supplies, \$616 for postage and shipping, \$209 for printing and publication, \$565 for filing fees, \$17 for tolls and parking, \$473 for raffle fundraising, \$12,500 for carving the statue, \$9000 for granite, \$850 for a cement base, and \$900 for bricks and paving around the statue. On December 31, 2001, ABC had a bank balance of \$2,065. Tr. pp. 59-64; Applicant’s Ex. No. 3.
- 8.ABC’s initial fundraising was through the sale of cookbooks, a raffle, a “shop and share” program with Jewel Food Stores, and a bowling fundraiser. Tr. pp. 39-40; Applicant’s Ex. No. 13.
- 9.ABC operates under a set of bylaws which require an organizational meeting, held each year in October, to plan for the annual December 6 candlelight vigil at the statue. Tr. pp. 18-19; Applicant’s Ex. No. 5.
10. The public is welcome at the December 6 vigil. The program includes songs and guest speakers. All participants are given a flower to lay at the statue and a candle, purchased by ABC. In December, 2001, 70 people attended. Tr. pp. 19, 47, 50.

11. Flyers are left at the ABC Cemetery soliciting donations from those who “wish to help with the maintenance and upkeep of our angel, or make a memorial donation.” Tr. pp. 19-20; Applicant’s Ex. No. 6.
12. Since the statue was erected, ABC has put in a bench in the area so people can sit and relax. Solar powered floodlights were erected around the statue because the cemetery is open 24 hours/day. Bricks were installed in the front of the statue. There is a memory book, kept in a plastic bag, at the statue. People list their name and address and write their thoughts and reflections in the book. In the week preceding the evidentiary hearing, 18 people signed the memory book. ABC invites the signers to the candlelight vigil. Tr. pp. 20-21, 36, 47-48, 52-54.
13. ABC would like to build an enclosure for the memory book, to keep it out of the weather. Plans also call for the planting of an arbor over the bench so visitors are not exposed to the sun, and for the planting of rose bushes and shrubs. All costs of maintaining the statue, including washing, sealing, painting, waxing, are borne by ABC. Tr. pp. 35-36, 38, 50-51, 55-56.
14. In 1999, Illinois had 1,504 infant deaths, or an 8.3% infant mortality rate. In 1997, in the United States, there were 26,390 fetal deaths (stillborns and 20 weeks to term), 18,524 early neonatal deaths (birth to 28 days), and 29,045 infant deaths in the first year. Tr. pp. 25-26; Applicant’s Ex. No. 9.

15. ABC worked for the passage of Public Act 92-0348, which provides that a hospital having custody of a fetus following a fetal death must notify the mother of her right to arrange for the burial or cremation of the fetus. Previously, the hospital disposed of the fetus. Tr. pp. 29-30; Applicant's Ex. No. 9.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from use tax. In support thereof, I make the following conclusions:

The applicant seeks to qualify for an exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]" 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears the burden of proving "by clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist.1991). Moreover, it is well established that there is a presumption against exemption and that therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of the exemptions "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or

shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2d Dist. 1995).

Applying the guidelines from Methodist Old People's Home, I find that the applicant has presented clear and convincing evidence that it is, in fact, a charitable organization. The Illinois Supreme Court has described "charity" as follows: "Charity does not necessarily mean almsgiving but, in a broader sense, is defined as an application of property for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering and constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens on government." Coyne Electrical Co. v. Paschen, 12 Ill. 2d 387 (1957).

The ABC Christmas Box Statue provides a place for people to mourn the loss of a child, especially if the child is buried in another city, or has no identifiable grave marker, or has been cremated. Tr. pp. 11-12. Visitors to the statue are able to list their thoughts and reflections in the memory book kept at the statue. Tr. p. 21. In the week before the evidentiary hearing, 18 people signed the memory book, although "there may be people who have come and have not decided to leave a note." Tr. p. 48. Approximately 70

people attended the December 6, 2001, candlelight vigil. Tr. p. 50. December 6 is celebrated as “Children’s Day” throughout the world. Tr. pp. 11-12. “Some people have buried their children in other places and can’t go there freely on a plane to visit the grave.” The angel “is a place for people to go and mourn and heal their loss.” Tr. p. 11. The testimony shows that the ABC Christmas Box Statue enables visitors to relieve themselves from suffering in accordance with the definition of “charity,” above, and I conclude that ABC is operated exclusively for charitable purposes. 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).

The statue is open to the public in the cemetery without any restrictions 24 hours/day. Tr. p. 36. The comfort derived from visiting the statue obviously benefits an indefinite number of persons. ABC has no capital stock or shareholders. All of ABC’s funds are derived from public and private charity, and the funds have been spent entirely on the erection and maintenance of the statue. ABC does not provide gain or profit to any person connected with it as all three officers are unpaid and there are no paid employees. Applicant’s Ex. Nos. 4 and 14. Funds have been received from individuals, with one matching fund received from Kemper Insurance Company. Tr. p. 33. Finally, ABC does not place obstacles in the way of anyone who wishes to find comfort from the statue. The statue is accessible to anyone visiting the cemetery. The December 6 vigil is open to the public. “It doesn’t make any difference where they want to come from. Anyone is welcome.” Tr. p. 19. ABC purchases flowers for people at the vigil to leave at the statue so that no one will “feel left out.” Tr. p. 19.

Based on the testimony and evidence admitted at the hearing, I conclude that ABC qualifies as a charitable organization and I recommend that the Department’s determination denying the applicant a sales tax identification number be reversed, and

that ABC be granted a sales tax identification number.

ENTER:

Kenneth J. Galvin

September 17, 2002